GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16072 of the John Hancock Mutual Life Insurance Company, pursuant to 11 DCMR 3107.2, for a variance from the prohibition against increasing the gross floor area of an existing hotel [Paragraph 350.4(d)] in an R-5-B and R-5-D Districts at premises 2660 Woodley Road, N.W. (Square 2132, Lot 32).

HEARING DATES: December 20, 1995 and February 21 and March 6, 1996

DECISION DATE: May 1, 1996

ORDER

PROCEDURAL BACKGROUND:

This case concerns the Sheraton Washington Hotel at 2660 Woodley Road, N.W., a designated historic landmark with an extensive zoning history. The hotel is co-owned by John Hancock Mutual Life Insurance Company, Sumitomo Life Realty, Inc. and ITT-Sheraton Corporation. These entities operate the hotel through a joint venture ("2660 Joint Venture"). The application in this matter was filed by John Hancock, on behalf of the joint venture. The applicant is referred to hereafter as the "Sheraton."

The hotel is located in Square 2132, bounded by Woodley Road on the north; Connecticut Avenue and 24th Street on the east; Calvert Street on the south; and 29th Street on the west. The site is split-zoned R-5-B and R-5-D.

The site consists of 702,313 square feet of sloping topography, and is improved with the 10-story hotel containing approximately 1400 rooms or suites, an outdoor pool and deck, a parking garage, driveways and landscaping. During 1978-80, a portion of the then-existing structure was demolished and the hotel was substantially rebuilt.

On June 16, 1995, the Sheraton filed a request pursuant to 11 DCMR 3107.2 and 350.4(d) for an area variance to allow an increase in gross floor area in order to expand and reconfigure the hotel's meeting room space, and for other purposes. The first public hearing on this case was held on December 20, 1995.

The hearing was continued to February 21, 1996. At that time, the Woodley Park Citizens Association ("WPCA") and Advisory Neighborhood Commission 3C ("ANC 3C") requested and were granted status as parties in opposition. The hearing concluded on March 6, 1996.

PRELIMINARY MOTIONS:

As a preliminary matter, WPCA moved to dismiss the application as improperly advertised. WPCA contended that, based on its review of the public record in this case, the relief sought properly should have been characterized as a use rather than an area variance. WPCA argued that the application self-evidently showed that the Sheraton intended to establish a "new" hotel use at the site, rather than altering an existing use. Section 350.4 of the Zoning Regulations prohibits "new" hotel uses on, inter alia, the subject site. As a separate preliminary matter, WPCA moved to dismiss the application on the ground that preclusion principles foreclosed the Board from granting the requested relief. WPCA argued that the Board's decision in BZA Case No. 14072, rejecting a previous attempt by the Sheraton to increase its gross floor area, operated as either collateral estoppel or res judicata to bar granting the instant application. The Board considered written and oral arguments on both motions from WPCA and the applicant, and deferred its decision until the conclusion of the hearing.

SUMMARY OF THE EVIDENCE OF RECORD:

1. A change in the text of the Zoning Regulations in 1980 prohibits any new hotel use in a residential zone, including either an increase in the total gross floor area of an existing hotel or a modification of existing space, which would increase the total amount of space devoted to function rooms, exhibit areas or commercial adjuncts.[1]

2. The applicant is requesting a variance to increase the gross floor area of the Sheraton for the addition of new meeting space, "pre-function" space, and a "mechanical mezzanine;" additional parking space; the enclosure of a courtyard for the construction of a new entrance; the addition of a new porte-cochere; the enclosure of a loading dock; the enclosure of the outdoor pool and terrace; and the expansion of the health club.

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[1]Zoning Commission Order No. 314 dated May 16, 1980, codified at Paragraph 3105.34 [11 DCMR 350.4(d)] and providing that a "Hotel, only in R-5-B, R-5-C, R-5-D or R-5-E districts, in existence as of May 16, 1980, with a valid Certificate of Occupancy or a valid application for a building permit; Provided, that the gross floor area of the hotel may not be increased and the total area within the hotel devoted to function rooms, exhibit space, and commercial adjuncts may not be increased. An existing hotel may be repaired, renovated, remodeled, or structurally altered... ." The 1980 amendment affected three large, well-known hotels -- the Sheraton, the Washington Hilton and the Shoreham -- and an unknown number of smaller hotels.

The total amount of new construction was stated by the applicant's architect as over 200,000 square feet. A portion of that total does not count against the permitted floor area ratio (FAR) because it is below grade. The amount of meeting space would be increased by 29,000 square feet, approximately half of which will result from new construction with the remainder created from the reconfiguration of existing space.

3. The Sheraton is the only commercial property in Square 2132. The remainder of the square is occupied by several apartment houses and the Oyster elementary school, a public school.

4. In documents filed with the Board and in its witnesses' testimony, the applicant stated that the above-described additions and changes are needed to improve the internal and external circulation of the hotel, and to allow the hotel to more efficiently host 2 mid-size (600) business conventions simultaneously. These problems have two primary sources: Site and building design decisions that accompanied the 1978-80 renovation; and shifts in hotel use by meeting planners. On the latter point, the applicant explained that the market for corporate and business customers -- which the hotel prefers, because it is more profitable -- has changed. When the hotel was rebuilt circa 1980, a strong market existed for 1200-room conventions or meetings. Today, meetings tend to be either much larger, requiring resort to convention centers, or much smaller.

The Sheraton seeks to operate in today's market by hosting two or more concurrent meetings of 300-600 rooms each. Each meeting typically requires a plenary session room and several adjacent "break-out" rooms. Because the Sheraton was configured to serve a single large meeting, it cannot provide the desired physical format for all of the meetings it hosts. One of the applicant's witnesses, hotel manager Paul Burke, identified two plenary session spaces, the Cotillion Ballroom and the Grand Ballroom, and said that only the Grand Ballroom currently has sufficient adjacent break-out rooms. Guests who meet in plenary session in the Cotillion Ballroom must walk long distances to reach break-out sessions, he said. He stated that the inclusion of additional meeting rooms over the new parking garage addition, proximate to the Cotillion Ballroom, would rectify that situation. In addition, Mr. Burke stated that enclosing the pool would allow the hotel to compete with resorts in Florida, Arizona and California.

Finally, Mr. Burke testified that if the requested zoning relief were not granted, the hotel would have to accept more convention business from social, military, educational, religious and fraternal groups ("SMERF") and put off cosmetic renovations, such as upgrading the carpets and painting. Mr. Burke said SMERF groups are less economically advantageous, since SMERF groups generally pay lower room rates. See generally Tr. at 149-150.

5. Rachel Roginsky, a representative from the consulting firm that advised the Sheraton on a long-term marketing strategy, testified that the Sheraton continues to earn a profit, but at a declining annual rate of increase. She expressed the opinion that the proposed improvements would attract a higher percentage of corporate and business guests. She also testified that "in order to allow the hotel to continue to operate as a hotel that effectively attracts association and corporate group business rather than SMERF and bus tour business," the hotel would need to address the functional problems described by Mr. Burke (Tr. 177). With regard to SMERF business, Ms. Roginsky stated that "SMERF group demand is readily available and not meeting space-intensive" but does not command as high a room rate as business users . . . ." (Tr. 178).

6. Jonathan Nehmer testified as the applicant's architect According to Mr. Nehmer, some of the "unique" aspects of the Sheraton leading it to seek zoning relief include: a narrow entrance drive resulting in traffic congestion; a poorly designed entrance and lobby that crowd hotel guests and fail to create an architectural sense of "presence" for arriving quests; adverse neighborhood impacts arising from inadequate parking (Tr. 155); the lack of an indoor pool; and a poorly located bar that is virtually ignored by guests (Tr. 162). Mr. Nehmer acknowledged on cross-examination that all of these problems could be corrected without variance relief and that it was the hotel's desire to change its programmatic needs that necessitated the relief sought (Tr. II 34).

7. William Anderson testified as the planning expert for the applicant. Mr. Anderson said the applicant proposed to increase its space by approximately 200,000 square feet, exceeding the maximum FAR permitted on the site by 30,079 square feet for a matter of right use. He calculated the maximum allowable gross floor area for the site at 1,407,863 (Tr. 171). He indicated that an additional 40,000 square feet of space would be added for parking. The additional parking space would not be included in zoning tabulations because the space is underground.

8. Mr. Anderson described the hotel as "unique" for purposes of the zoning variance test for the following reasons: its size; changes in lot grade; its existence as an aggregation of several different building structures with incompatible mechanical systems, and the distances between some of those structures (Tr. 172-73). Upon cross examination, he indicated that he could not relate these factors to individual elements of the Sheraton's renovation plan. He said he reviewed the factors constituting uniqueness in the aggregate and said the renovation plan responded to the Sheraton as a whole. Also under cross examination, Mr. Anderson indicated that a variety of improvements cited in the pre-hearing statement as necessary to improve internal circulation could be accomplished without a variance. These elements include: improved signage; changing the grade of the front of the building;

reconfiguring the driveway; refurbishing the ballroom; renovating the existing meeting rooms and exhibit halls; renovating the main kitchen; replacing the central chiller plant; replacing the roofs; renovating the Center Tower Presidential Suites; renovating the Park Tower guest rooms and corridors; renovating the Wardman Tower; painting, and upgrading the carpets.

9. Lou Slade, a traffic expert, also testified. Mr. Slade testified that a change in the clientele of the hotel to include fewer SMERF groups and more business groups would lessen the adverse impact of traffic on the surrounding neighborhood. [The traffic analysis presented to the Board did not contain any peak hour capacity or level of service analysis of the major intersections near the hotel and instead relied on information provided by the hotel (Tr. II 97, 100-02).]

10. A number of individuals testified in support of the expansion of the Sheraton, including employees and representatives from the hospitality and tourism industries.

11. Two witnesses from the association industry testified. C.J. Brown, Executive Director of the District of Columbia Dental Society, stated that his organization holds its annual meeting at the Sheraton and has found no other place in the District of Columbia or the suburbs which offers the same space as the Sheraton (Tr. 266, 275). Therefore, he said his convention will be held at the Sheraton even if no changes are made to the facility. (Tr. 276). John Grove, Executive Vice President of the American Society of Association Executives, also indicated that, although the Sheraton has some features which make it less than ideal for meetings, it is unique in the region in terms of its size and meeting facilities, and continues to attract business on that basis (Tr. 287).

12. The Office of Planning filed a report on February 14, 1996. The Office of Planning supported the application because the site's topography, large size, the historic designation of the Wardman Tower and the siting of the structures together created conditions which warranted a variance (Tr. II 114). The Office of Planning acknowledged, however, that it had supported an area variance request by the hotel in 1984 for the very same reasons which were then rejected by the Board (Tr. II 121, 123, 125).

13. ANC 3C provided testimony through two of its commissioners, Jeremy Bates and Phil Mendelson and former commissioner Pat Wamsley. According to ANC 3C; the application should be treated as a use variance; the decision of the Board in 1984 on the applicant's previous request for a variance precluded the relief being sought; the property is not unique as it shares many characteristics of other hotels in residential districts; and the proposal is inconsistent with section 1200.302 and other sections

of the Comprehensive Plan (Tr. II 182-185, 190-196).[2]

14. The WPCA presented a number of witnesses and experts in support of its opposition to the application. Dr. Everett Carter, an expert in traffic analysis, presented the Board with a critique of the traffic analysis prepared by the hotel's expert Gorove-Slade. In his analysis, Dr. Carter noted that the Gorove-Slade analysis did not address peak hour concerns, as would be appropriate with a proposed expansion of a facility like the hotel, that the proposed shift in clientele to more corporate and association business would have a greater impact on peak hour traffic than the existing situation and that the analysis in the report on taxi trips is inaccurate for failing to take into account half of the trips normally attributed to taxis, that is, when they leave the hotel (Tr. II 138-40).

15. William Carroll, a member of the Executive Committee of WPCA and its past president, testified concerning the facts surrounding the Zoning Commission's adoption of the section prohibiting the construction of new or the expansion of existing hotel uses in residential districts as responsive to complaints raised about the Sheraton and the traffic generated by convention hotels like it and the Omni Shoreham (Tr. II 243-49). Mr. Carroll also clarified statements made by the hotel regarding the tax revenue received by the District of Columbia from the hotel and compared it with the tax revenue from the residential area (Tr. II 252-53). Mr. Carroll stated that the hotel's consultant

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[2]Provisions of the Ward 3 Plan emphasize the importance of protecting the Ward's residential character and limiting commercial development to existing levels. That law provides, inter alia;

> Ward 3 is primarily a residential sector of the District, rather than a center for commercial or industrial activity . . . . The primary economic development issue for Ward 3 is . . . how to control the strong development pressures that . . . exist. . . ." Section 1200.302(a).

The Plan provides further that:

> Ward 3 can contribute to the economic viability of the District through the protection and promotion of its residential character. . . . Any new development should contribute foremost to the range of retail goods and services that are necessary to support the household needs of Ward 3 residents.

Section 1300.302(c)(1)-(2).

recommended against expansion, recommending instead increasing the flexibility of internal space.

16. Ms. Ellen M. McCarthy testified as an expert witness on urban planning issues for WPCA. She indicated that the applicant had erred in seeking an area variance, when instead a use variance was required, since Zoning Commission Order No. 314 is explicit in stating that, "no new or expanded hotel would be permitted in any residential zone." She also pointed out that area variances are those which typically deal with issues such as percentage of lot occupancy, or size of rear or side yards, not the expansion of a use which is non-conforming. She further indicated that the Zoning Commission had carefully worded Paragraph 350.4(d) so that existing hotel uses were not technically made non-conforming, given the problems which that creates for owners who need to refurbish facilities or rebuild in the case of fire or other disasters, but it clearly indicated that any new hotel use would be a prohibited use.

17. Ms. McCarthy indicated that the factors cited by the Sheraton as constituting uniqueness for purposes of the tests for variances were, in fact, not unique, since all factors except one are shared by every other hotel in residential areas whose expansion had been blocked by Zoning Commission Order No. 314. the factors were: large size; with steep grade changes and bordered by numerous streets; one portion of the building designated as an historic structure on the exterior; being subject to Zoning Order No. 314; having building systems and functions which are not fully integrated and having a confusing layout. As such, she indicated, the Board must recognize the very possibility that all those hotels will come to the Board for variances to permit expansion, in effect nullifying the thrust of the Zoning Commission's decision in Order No. 314.

18. Ms. McCarthy also stated that the applicant had not provided a nexus between the factors cited as establishing uniqueness, and the need for a variance for the particular items which require the variance.

19. Ms. McCarthy further pointed out that the applicant had shown neither "peculiar and exceptional difficulties" nor "hardship", the two tests for area and use variances, respectively. The applicant's consultant indicates that current operations continue to be profitable, and that, without the variance, in order to continue profitable operations, the hotel must increase its SMERF business, which is not an exceptional difficulty. She also maintained that any hardship due to confusing building layout was self-inflicted, since the Sheraton could have designed the main building differently in 1978-80, when the major portion of the hotel was constructed. Ms. McCarthy stated that, in fact, the hotel's own consultant recommended against expansion of the hotel

in its initial assessment, arguing instead for increasing the flexibility of internal space.

20. Ms. McCarthy and several residents testified to the intolerable level of current problems relating to general traffic in the vicinity of the hotel, the particularly offensive nature of large trucks which service meetings and conferences, the parking shortages caused by illegal parking by hotel guests and employees, long taxi queuing lines which spill out onto the street, blocking traffic while they wait to enter the hotel, tour buses and buses to transport meeting attendees to the convention center and various events parking and idling both on-site and nearby. Ms. McCarthy pointed out that two of the most disruptive problems, inability of local residents to find parking spaces caused by evening and weekend parking for hotel events and traffic congestion and noise caused by trucks delivering exhibits and conference supplies and equipment, will be exacerbated by the proposed improvements, including the increased meeting space and the improved ballroom and "pre-function" spaces. She quoted the previous Board of Zoning Adjustment decision on the hotel in 1984, which concluded "[a]ny increase in the intensity of this major hotel use would be undesirable, and would be detrimental to the public good." (BZA Order No. 14072 dated August 17, 1984).

21. Another potential adverse effect identified by Ms. McCarthy is the prospect that, with the additional meeting space, the Sheraton and the other members of the "Connecticut Collection" (the Omni Shoreham, and the Washington Hilton) may be more able to compete with the new Convention Center which is about to be constructed.

22. In terms of the integrity of the Zone Plan, Ms. McCarthy testified that permitting this variance would substantially undermine a direct prohibition by the Zoning Commission on expansion of commercial hotels in residential neighborhoods.

23. Ms. McCarthy also disputed the hotel's primary rationale for the expansion. She indicated that:

- the hotel did not show that they had adequately considered other means to increase meeting and convention business, such as better utilization of the historic character of the Wardman Tower.

- the hotel's consultants justify their recommendations based on assumptions about the market for meetings, but do not show that they have taken into account trends which may render those assumptions incorrect, such as the increased use of teleconferencing, which is reducing the demand for corporate and association meetings; enormous cuts in the federal government budget, and dramatic

reductions in regulations, both of which reduce the demand for Washington-based meetings; a potential continuation of the decline in meeting size, in which case the market may shift to 100-200 room meetings, at which point the hotel would lack sufficient plenary session space to accommodate 6 to 12 meetings at a time, having only two large ballrooms; the likelihood that competing hotel facilities will renovate and expand their facilities, setting off the need for an additional round of expansion at the Sheraton.

24. Numerous neighborhood residents testified in opposition to the application, as well as representatives of a number of apartment buildings and condominium associations. These individuals testified to specific adverse impacts associated with the hotel as it currently exists. They identified these impacts as follows: congestion of truck, bus and automobile traffic; increased trash and litter; diminishing residential property values; cracking wall and pipes from truck vibrations; noise and air pollution from traffic and loading dock activity; and lack of on-street parking in the neighborhood.

25. Kathy Reuter, an employee of the U.S. Chamber of Commerce and a neighbor, testified that her association used to have conferences at the Hilton every year but as a result of teleconferencing innovations, the Association no longer utilizes the services of a hotel for its conferences (Tr. II 352).

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Based on the summary of evidence, the Board finds and concludes the following:

The subject hotel, since it existed in its current configuration prior to May 16, 1980, is a conforming use in accordance with the Zoning Regulations. The hotel was designed and built within existing laws at the time of construction.

The applicant is seeking an area variance, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape, or topographical conditions. The Board further must determine that the application will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.[3]

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[3]In finding that applicants properly requested area variance relief, we necessarily deny opponents' motion to dismiss this action as improperly advertised on the ground that the relief

The instant application is significantly different from the application of the hotel denied by the Board in BZA Case No. 14072 in 1984. In that case, the Board turned down a request by the hotel to enclose its pool deck and determined that the hotel had not demonstrated the nexus needed between the exceptional conditions of the land and the practical difficulty of not having an enclosed swimming pool. The subject application, while it does involve enclosing the pool as a minor component of the Master Plan, is a major restructuring of all of the hotel's public areas and its grounds. The doctrines of res judicata and collateral estoppel are not applicable to this application on the whole. Accordingly, the motion to dismiss on these grounds is denied.[4]

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sought entails a use variance. The language of the regulation governing hotels in residential neighborhoods is somewhat ambiguous, making the question a close one. Nevertheless, we have concluded that the applicant's proposal is better characterized as an augmentation of the longstanding hotel use on the site, requiring an area variance, rather than as a new use. We note that an expansion may be of such magnitude that it becomes a de facto change in use. For instance, in this matter, were the proposed expansion to result in a hotel double or triple the size of the existing entity, we might well characterize the relief as a request for a use variance. As we read Paragraph 350.4(d), the prohibition against a new hotel use is properly interpreted to mean a substantial increase in such new use.

[4]However, regarding solely the enclosure of the pool, the Board concludes that the relief sought is barred by preclusion principles. In the 1984 case, the applicant sought a variance from the prohibition against increasing the gross floor area of a hotel to enclose an existing outdoor pool and terrace. According to the applicant, without an enclosed pool it was at a competitive disadvantage. The Sheraton argued then, as now, that it was entitled to a variance because its property was unusually shaped, being extremely large with three street frontages, and improved with an existing structure, whose use had been grandfathered. The Sheraton contended that there was no reasonable use for the pool and deck area other than for hotel purposes. At that time, the Board found that the applicant was unable to show any nexus between the factors cited as causing uniqueness and unusual shape of the lot and the three street frontages and the relief sought.

The applicant again requests an area variance to (among other things) enclose the existing outdoor pool and terrace. However, the applicant failed to demonstrate that enclosing the pool is a necessary and integral part of the changes proposed to alleviate the alleged practical difficulties. Having failed to make the

The applicant failed to demonstrate that its property is subject to a unique condition that creates a practical difficulty in using the property in strict compliance with the zoning regulations. Rather, the Board finds that the factors cited: topographical conditions, size, variety of structures, adjacency to multiple streets, confusing layout and prohibition against expansion by Paragraph 350.4(d), apply to numerous properties in the area, including two nearby hotels, and that, in any event, they have no bearing on the improvements proposed since no nexus has been shown to exist between those "unique" circumstances and the improvements which would require a variance. Furthermore, as the applicants' testimony demonstrated, many of the proposed improvements can be accomplished without an area variance.

Operation of the hotel can continue without the variance.

The proposed expansion of the hotel is highly likely to increase passenger vehicle and truck traffic on the roads that surround the hotel property. As these streets now are often congested, these additional vehicles will likely queue for some time, causing additional noise and air pollution in the neighborhood.

The Board concludes that the applicant has not met the burden of proof necessary to grant the application. The applicant has not established that there exists some exceptional or extraordinary situation or condition of the property, causing a practical difficulty upon the owner in the strict compliance of the zoning regulations. There exists no nexus between the factors cited as establishing uniqueness of the property (i.e. the site's large size, its topography, the historic designation of the Wardman Tower, the siting of the structures, and changes in the hotel market), and many of the proposed increases in the gross floor area which create the need for an area variance.

The Board recognizes that many of the improvements called for in the Sheraton's renovation plan (such as the construction of the parking garage, the enclosure of the loading docks and the swimming pool, etc.) will facilitate smoother, more efficient hotel operations and/or lessen some neighborhood adverse impacts if

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connection, the Boards consideration of enclosing the pool and terrace is no different than it was in 1984. In light of established precedents, the applicant is barred from obtaining an area variance now since no new conditions have been identified and since the claims relating to uniqueness and practical difficulty by the applicant are the same as those argued or could have been argued, supporting its previous request for a variance.

implemented, and/or provide additional amenities. However, the Board is also aware that unless the increases associated with these improvements can be tied directly to exceptional or extraordinary conditions of the property, the zoning regulations prohibit them, and the Board of Zoning Adjustment must first look to the Zoning Regulations for guidance in granting relief.

The arguments presented by the applicant, if accepted, would entitle every hotel located in a residential zone to a variance. As the Court has repeatedly recognized, "if the BZA were to grant variances where the hardship or difficulty is not peculiar to a particular piece of property, similar requests could follow from property owners similarly situated, which, as a matter of due process, would have to be granted. The effect of such decisions by the BZA would be an amendment of the zoning regulations by that body, an action which the BZA is not empowered to take." Capital Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment, supra, 534 a.2d at 941-942. Accordingly, the Sheraton is not entitled to a use variance.

The Board further concludes that approval of the application would be contrary to the intent and purpose of the zone plan as embodied in the Zoning Regulations. The Board is of the opinion that the Zoning Commission intended to protect existing hotel uses in residential districts as they existed; hence their status as conforming uses. The Board further believes that the Commission intended these uses to be able to upgrade, improve and modernize their facilities without expanding their gross floor area except where unique property features made that implausible. It is the Board's opinion that the increases requested here far exceed those which might otherwise be justified as necessary because of exceptional or extraordinary conditions which arise out of the property.[5]

Since the applicant may implement many of the improvements contained in its renovation plan without a grant of zoning relief, and since the applicant has recourse to seek a text amendment from the Zoning Commission, and since currently, the hotel use is a profitable one, the Board concludes that the applicant has

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[5]In order to implement the entirety of the Sheraton's plan, the applicant may need to apply to the Zoning Commission for a text amendment, rather than requesting relief of the magnitude contained in this application from the Board of Zoning Adjustment. The granting of this degree of relief might be characterized, upon review by the Commission, as a de facto amendment of the Zoning Regulations, which is something the Board may not do. [Zoning Commission Order No. 698, Case No. 91-5 (Sua Sponte Review of BZA Order No. 15361).]

reasonable alternatives that will maintain the hotel use as a thriving facility which contributes to the economic life of the District of Columbia. The Board of Zoning Adjustment may not provide zoning relief in order to assist applicants in increasing their market share of business over competitive facilities in the region or on the east coast in the absence of the applicant's ability to meet the tests for the granting of such relief.

The Board concludes that the applicant has not demonstrated any practical difficulty that it would suffer if the Regulations were strictly applied. The applicant has reasonable alternatives that will maintain the hotel use.

The Board further concludes that a change in market conditions which affects all property owners simply does not provide a recognizable basis for an area variance.

The Board further concludes that construction of the proposed improvements would have an adverse effect on the quality of life of the residents in the area adjacent to the property. Indeed, this Board found in a previous case involving this applicant's desire to implement a much less ambitious improvement, the enclosure of the pool area, that the increase in traffic from that improvement alone would have a substantially adverse effect on the neighborhood.

Thus, the Board further concludes that the requested relief is not in harmony with the general intent and purpose of the Zoning Regulations and map and will tend to affect adversely the public good as a result of the increase in the number of mid-sized group meetings, the truck and vehicular traffic that they will generate, and the noise and congestion associated with them.

Our precedent on these points is clear. In Palmer v. Board of Zoning Adjustment, 287 A.2d 535 (D.C. 1972), the Court interpreted D.C. Code Subsections 5-420, 5-424(g)(3) and the corresponding provision of the zoning regulations, 11 DCMR Subsection 3107.2, which permits the Board to grant variances, pursuant to the following:

> Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such

> relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zoning plan as embodied in the zoning regulations and map.

In short, the Board is empowered to grant an area variance where it finds three conditions:

> (1) The property is unique because, inter alia, of its size, shape or topography;
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> (2) The unique conditions of the property would cause the owner to encounter practical difficulties if the zoning regulations were strictly applied;
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> (3) The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

See also Roumel v. District of Columbia Bd of Zoning, 417 A.2d 405, 408 (D.C. 1980); Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning, 398 A.2d 13, 15 (D.C. 1979) (unique circumstances cannot refer to the personal misfortunes of the applicant). See also Association For The Preservation of 1700 Block of N Street, N.W. v. Board of Zoning Adjustment, 384 A.2d 674, 678 (D.C. 1978) (the applicant must demonstrate that compliance with the area restriction is unduly burdensome and the practical difficulties are unique to the property).[6]

Reviewing the criteria for an area variance recently, the Court, in Capital Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941-942 (D.C. 1987), stated that the

> threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that 'the circumstances which create the hardship uniquely affect the petitioner's property ....' Taylor, supra note 6, 308 A.2d at 234 (emphasis in original). Where the circumstances which creates the

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[6]If the applicant can, through an alternative method of construction, comply with the zoning regulations than no practical difficulty exists. See Barbour v. Board of Zoning Adjustment, 358 A.2d 326 (D.C. 1976). See also Russell v. Board of Zoning Adjustment, 402 A.2d 1231, 1236 (D.C. 1979).

> hardship or difficulty affect the entire neighborhood rather than merely a specific piece of property, the problem is properly addressed by seeking amendment of the regulations from the Zoning Commission. Id. If the BZA were to grant variances where the hardship or difficulty is not peculiar to a particular piece of property, similar requests could follow from property owners similarly situated, 'which, as a matter of due process, would have to be granted.' Id. The effect of such decisions by the BZA would be an amendment of the zoning regulations by that body, an action which the BZA is not empowered to take. Id.

See also Russell v. Board of Zoning Adjustment, supra, 402 A.2d at 1235) (The requirement that the practical difficulty be caused by the uniqueness of the property and not the plight of the property owner "insures relief for problems peculiarly related to the land or structure, and not shared by other property in the neighborhood, thus avoiding a de facto amendment of zoning laws").

In Capitol Hill Restoration Society, the court concluded that an area variance to permit a carriage house to be used as a residence could not be supported on the ground that the property was unique either because of its inclusion in the Capital Hill Historic District or because the lot was wider than average. The property was not unique in either regard since every parcel of land in the area is within the Historic District and there are other large lots in the area. The Court did recognize, however, that a "condition inherent in the structures built, rather than in the land itself, may also serve to satisfy an applicant's burden of demonstrating uniqueness," and referred to the decision in Clerics of Saint Viator, Inc. v. Board of Zoning Adjustment, 320 A.2d 291 (D.C. 1974) as support for that statement. In Clerics of Saint Viator, a use variance was sought to convert a religious seminary into a nursing home because the continuing decline in the seminary's enrollment produced a hardship.

The Board further concludes that it has accorded to the ANC the "great weight" to which it is entitled.

Based on the record of this case and the findings of fact and conclusions of law contained in this order, the Board **ORDERS DENIAL** of this application.

VOTE: 3-2 (Laura M. Richards, Susan Morgan Hinton and Maybelle Taylor Bennett to deny; Angel F. Clarens and Sheila Cross Reid opposed to the motion).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Madeliene H. Dobbins
MADELIENE H. DOBBINS
Director

FINAL DATE OF ORDER: MAR 17 1997

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

16072ord/RCL/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16072

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on MAR 17 1997 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Phil T. Feola, Esquire
Wilkes, Artis, Hedrick and Lane
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Richard B. Nettler, Esquire
Robins, Kaplan, Miller & Ciresi
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Washington, D.C. 20006-1301

Roxane D.V. Sismanidis
Woodley Park Citizens Association
2843 29th Street, N.W.
Washington, D.C. 20008

Mr. Phil Mendelson, Chairperson
Advisory Neighborhood Commission 3C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Madeliene H. Dobbins

MADELIENE H. DOBBINS
Director

Date: MAR 17 1997